IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2442 of 1996
To
FIRST APPEAL No. 2445 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
PATEL BAI NANDUBEN JIVA - Defendant(s)

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Appearance :
MR SUNIT SHAH, GP in FA No. 2442/96 to FA No.2443/96 and
MR HH PARIKH, AGP in FA No.2444/96 to 2445/96 for Appellant(s) : 1,
MR YOGESH S LAKHANI for Defendant(s) : 1,
MR MEHUL S SHAH for Defendant(s) : 1,
MR SURESH M SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/03/2007

ORAL JUDGMENT

1. The present group of appeal are preferred against the Judgment and Award passed by the Reference Court dated 10.01.1996 in Land Reference Cases Nos. 72/87 & others.

2. Heard Mr. Sunit Shah, learned GP with Mr.Parikh, learned AGP for the State, Mr.Dave for Mr. Lakhani in First Appeal Nos. 2442 & 2443 of 1996 and Mr. Shah in First Appeal Nos. 2444 & 2445 of 1996.

3. It appears that on the factual aspects, there is no dispute that the land under acquisition was having the status of agricultural land. The land acquisition officer in the Award had considered the sale instances of the agricultural land as well as the sale instances of the non-agricultural land. As per the respondents-claimants, in addition to the sale instances, which were considered by the Land Acquisition Officer by Exh. 19, one Laljibhai Manjibai was examined for purchase of the land on the eastern side of the college at the rate of Rs.80 per sq. yard and the Sale Deed were also produced in Exh.20 & 21 to support that the market value of the land is about Rs.80/- per sq. yard. The deposition of the said Laljibhai Manjibhai shows that the land of the said Sale Deed is situated on the eastern side of the college and after the college, there is a road and thereafter, the plots are situated. The

land under acquisition as per the evidence on record and is rather an admitted position that it is situated on the western side of the college and it appears that college is situated on the National Highway and the old city of Jetpur is situated on the eastern side of the National Highway. The Reference Court after taking into consideration the sale instances of the non-agricultural land concluded that Rs.60/- per. sq. mtr. appears to be the market price of the land under acquisition, which are situated on the interior side, the Reference Court found that Rs.50/- sq. yard appears to be the market price and on the basis of the said conclusion, the additional amount of compensation is ordered to be paid minus the valuation already fixed by the Land Acquisition Officer. The other aspects of solatium, interest, etc., are not in dispute.

4. The principal contention raised on behalf of the State appears to be on the aspects of market value fixed by the Reference Court. Mr.Mehul Shah as well as Mr. Dave, learned counsels appearing for the respective respondents, supported the valuation by contending that the Reference Court has considered the potentiality of the land and after taking into consideration the sale instances and the location of the land, the market price is fixed.

5. It appears that the basic distinction between

the agricultural land and non-agricultural land is lost sight of by the Reference Court while fixing the market price of the land in question. At this stage, it would be worthwhile to refere to the decision of the Apex Court in case of **"Kasturi v. State of Haryana", reported in AIR 2003 SC, 202** and more particularly the observations made at para 7 as under:-

> "7. It is not debated that sale transaction covered by Exbt. P-7 relates to a small plot and the land in question acquired is about 84 acre. This land comprising of large area is not developed although it has potential value for residential and commercial purposes. In order to develop this land, roads were to be laid, provisions for drainage was to be made and certain area was to be earmarked for other civic amenities. Thus, after leaving the area in the land required for the purposes mentioned above, plots were to be made for residential and commercial purposes by incurring expenditure for other developmental works, such as providing electricity, water, etc. The acquired land is not small plot located in such a way that no other development was required at all and it could be utilized as it is as a developed building site. It is well-settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3 amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for the residential or commercial purposes. A land may be plain or uneven, the soil of

the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that area adjoining his land is developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3 and in some cases less than 1/3. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case,

for development purpose."

Therefore, as such in a normal course 1/3rd deduction may be required to be made, however, in the case before the Apex Court, it was ultimately found by the Apex Court, as observed in para 14, as under:-

> "14. On facts and in the light of the legal position emerging from the various decisions referred to above, it is not possible for us to say that cut of 20% adopted by the learned single Judge as affirmed by the Division Bench in the impugned judgment is wrong or unsustainable. It appears to us having regard to facts and circumstances of the case that the High Court has applied cut of 20% as against the normal 1/3 deduction. We find that the High Court was right and justified in doing so."

6. It does not come on record as to whether sale instances were for the non-agricultural land for commercial purpose of that residential purpose, but it appears from the deposition of the claimants that on the adjoining portion of the land residential houses are situated on the northern side and on the southern side the sari factories are situated. Therefore, considering the facts and circumstances I find that in any case, the difference between the market value of the agricultural land and non-agricultural land would be less by 20% for agricultural land. It is hardly required to be stated that if the agricultural land is to be converted into non-

agricultural use, common plot, internal road and other space is required to be excluded and the net area, over which the structure may be permissible as per the building bye-laws would be available and such net land may be sold by the person after conversion for non-agricultural use. Therefore, the price as may be prevailing in the market would be as that of non-agricultural portion of the land which, in any case, would not be the same or at par with the agricultural land. Therefore, considering the basic distinction of the sale instances, as they were available before the Reference Court of the non-agricultural land and the land under acquisition was an agricultural land, the prices were required to be treated as less by 20%. The Reference Court has found that for the land under acquisition situated nearby the road, the market value is Rs.60/- per sq. mtrs., whereas interior to the road the market value is fixed at Rs.50/- per sq. mtrs. Both the findings are based on the sale instances and the price valuation for non-agricultural and not for agricultural land. If 20% reduction is considered, the price for such land would be reduced to Rs.48/- per sq. mtrs., for the land situated nearby road and Rs.40/- per sq. mtrs., for the land situated interior to the road. Out of the said amount, if the amount as ordered by the Land Acquisition Officer are excluded, the net effect would be as under:-

Sr. No.	Land Ref. No.	Amount awarded by L.A.O. per. sq. mtr.	Additional Of compensation after deduction
1.	72/87	Rs.18/-	Rs.30/-
2.	78/87	Rs.20/-	Rs.28/-
3.	82/87	Rs.10/-	Rs.30/-
4.	133/87	Rs.15/-	Rs.25/-

The other aspects of award passed by the Reference Court for solatium and interest do not deserve to be interfered with, but the same shall get proportionately reduced due to reduction in the amount of compensation.

7. In view of the above, the impugned judgement and award of the Reference Court are modified by fixing the compensation at the rate of Rs.48/- per sq. mtrs., in place of Rs.60/- per sq. mtrs. and Rs.40/- per. sq. mtrs., in place of Rs.50/- per sq. mtrs., for the respective lands as referred to hereinabove and conseuqent reduction in the solatium, interest etc.

8. The appeals are partly allowed to the aforesaid extent. No order as to costs. Decree accordingly.

(Jayant Patel, J.)

29.3.2007

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